

July 21, 2020

Senator Shelley Mayer  
Legislative Office Building  
Room 617  
Albany, NY 12247

**RE: SB 8780 – Gift Certificate Regulation**

Dear Senator Mayer:

On behalf of the Electronic Transactions Association (ETA), we appreciate the opportunity to share our thoughts regarding S8780. ETA supports your goals of ensuring consumers have access to gift card products that are easy to use and understand. To that end, we offer comments encouraging amendments to SB 8780 that ensure clarity, accessibility, fraud prevention, and modernized disclosure.

ETA is the leading trade association for the payments technology industry, representing over 500 companies that offer electronic transaction processing products and services. ETA's members include financial institutions, mobile payment service providers, payment processors, mobile wallet providers, and non-bank online lenders that make commercial loans, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with secure, convenient, and rewarding payment solutions and lending alternatives – employing millions of Americans and enabling over \$9 trillion in payments in 2019 in North America alone.

**Prohibition of Expiration Dates is Unnecessary and Limits Fraud Prevention Efforts**

SB 8780 broadly defines “gift certificate” to include electronic cards usable at one merchant or many unaffiliated merchants, including general-purpose prepaid reloadable cards. Section 5-a would make it unlawful for any person to sell or issue such a gift certificate where the device or underlying funds are subject to an expiration date. While the intent of the provision to ensure consumers have full and fair access to their funds is commendable, it is also unnecessary where open-loop gift certificates are concerned, and may hinder fraud prevention efforts.

The funds on “open-loop gift certificates,” what are commonly known as general-purpose gift cards, do not generally expire. While the physical card carries an expiration date, that date is a valuable tool for issuers and consumers – ensuring compatibility with payment network systems

that require expiration dates to function and as a fraud prevention mechanism and authentication data point. The expiration date present on such cards does not generally result in a loss of funds after the date is passed – the consumer must simply contact the card issuer to receive a replacement card with full access to the funds remaining on the previous card.

### **Digital Access to Terms and Conditions Modernizes Disclosures**

Section 3(c) of the bill provides that terms and conditions of gift certificates may be displayed “on an accompanying document, provided that a toll free telephone number to access the additional terms and conditions is printed on the gift certificate”. While we certainly applaud efforts to increase accessibility of terms and conditions, we would also encourage those efforts to take into consideration digital disclosures through the internet. By amending the relevant language to read “...provided that a toll free telephone number or website to access the additional terms and conditions...”, the bill would enhance accessibility for all consumers and modernize disclosures.

### **Limitation on Activation Fees Negatively Affects Low-Cost Gift Card Viability**

The bill’s language in Section 5(a), as written, prohibits activation or issuance fees in excess of the lesser of \$4.00 or 5% of the face value of an open-loop gift certificate. The prohibition of these fees may negatively affect the viability of low-cost, low-margin gift card products that many New Yorkers use every day.

As with all products, the fees are designed to offset the costs of manufacturing and servicing the cards, and are necessary to provide these low-cost products at scale. The bill’s caps on activation and issuance fees risk limiting consumer access to gift and prepaid cards – products proven to increase financial inclusion among all consumers.

“Gift certificates” covered by the bill – especially general-purpose prepaid cards – help low-to-moderate income (LMI) Americans conduct their everyday banking/financial transactions, be it making a purchase- in store or online, transferring money to a family member or friend, or accessing cash. These products and services make it possible for all Americans, especially LMI, to participate in the modern financial system.

ETA and its members are long-standing proponents of an inclusive financial system that provides high quality, widely accessibly, easy to use, affordable financial services. Our annual white paper on the subject highlights some of the ways in which our industry is providing products and services designed to help the underserved – including through prepaid products that would be subject to this bill – and education on financial literacy and readiness.<sup>1</sup>

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<sup>1</sup> <https://www.electran.org/wp-content/uploads/ETA-WP-UnderServed-2B.pdf>

Thank you for the opportunity to participate in the discussion on this important issue. If you have any additional questions, you can contact me or ETA Senior Vice President, Scott Talbott at [stalbott@electran.org](mailto:stalbott@electran.org).

Sincerely,



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